

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, INC.; CAROLINE
RECORDS, INC.; EMI CHRISTIAN MUSIC
GROUP INC.; VIRGIN RECORDS
AMERICA, INC.; COLGEMS-EMI MUSIC
INC.; EMI APRIL MUSIC INC.; EMI
BLACKWOOD MUSIC; EMI FULL KEEL
MUSIC; EMI GROVE PARK MUSIC, INC.;
EMI LONGITUDE MUSIC; EMI ROBBINS
CATALOG INC.; EMI U CATALOG, INC.;
EMI VIRGIN MUSIC, INC.; EMI VIRGIN
SONGS, INC.; EMI WATERFORD MUSIC,
INC.,

Plaintiffs,

v.

MULTIPLY, INC. and PETER PEZARIS,

Defendants.

07 Civ. 11357 (SHS) (MJD)

DEFENDANTS' INITIAL DISCLOSURES
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)

Pursuant to Federal Rule of Civil Procedure 26(a)(1) and this Court's Order dated April 12, 2008, defendants Multiply, Inc. ("Multiply") and Peter Pezaris (collectively, "Defendants"), through their undersigned counsel, make the following initial disclosures. These disclosures are based on information presently known and reasonably available to Defendants. Continuing investigation and discovery may bring new or different information to light. Defendants therefore reserve the right to amend or supplement these disclosures.

Defendants' initial disclosures represent a good faith effort to identify information they reasonably believe they may use to support their defenses. By making the following disclosures, Defendants do not represent that every individual or entity identified herein necessarily possesses information they will use to support their defenses or that the

individual or entity possesses relevant information. Nor do Defendants represent that they are identifying every document, tangible thing or witness they may use to support their defenses. Defendants reserve the right to call any witness, including the right to identify expert witnesses, or present any exhibit or item at trial not listed herein but determined through discovery, investigation, or otherwise to support their defenses. These disclosures are also not an admission by Defendants regarding any matter.

By making this initial disclosure, Defendants do not waive their right to object to discovery of any information based on disclosures herein on the grounds of the attorney-client privilege, work-product doctrine, or any other applicable privilege, immunity, law, or rule. Nor do Defendants waive their right to assert any other objection authorized by the Federal Rules of Civil Procedure or any other applicable rule or law in response to interrogatories, requests for admission, requests for production of documents, questions at depositions, or any other discovery requests involving or relating to the subject matter of these disclosures.

Each and every disclosure set forth below is subject to the above qualifications and limitations. Furthermore, Pezaris makes these disclosures without prejudice to any of the arguments or positions advanced in support of his pending motion to dismiss for lack of personal jurisdiction, and maintains his express disclaimer of the Court's personal jurisdiction over him.

1. Individuals Likely To Have Discoverable Information

Defendants presently believe that the following individuals are likely to have discoverable information that Defendants may use to support their defenses in this action:

	<u>Name</u>	<u>Telephone Number and Address</u>	<u>General Subject Matter</u>
1.	Peter Pezaris	c/o Multiply, Inc. 6001 Park of Commerce Blvd. Suite 300 Boca Raton, FL 33487 (561) 443-5566	Multiply's business, website and defenses.
2.	Michael Gersh	c/o Multiply, Inc. 6001 Park of Commerce Blvd. Suite 300 Boca Raton, FL 33487 (561) 443-5566	Multiply's business, website and defenses.
3.	David Hersh	c/o Multiply, Inc. 6001 Park of Commerce Blvd. Suite 300 Boca Raton, FL 33487 (561) 443-5566	Multiply's business, website and defenses.
4.	Marc Bernstein	c/o Multiply, Inc. 6001 Park of Commerce Blvd. Suite 300 Boca Raton, FL 33487 (561) 443-5566	Multiply's website and defenses.
5.	Brett Paden	c/o Multiply, Inc. 6001 Park of Commerce Blvd. Suite 300 Boca Raton, FL 33487 (561) 443-5566	Multiply's website and defenses.
6.	Tatiana Perczek	c/o Multiply, Inc. 6001 Park of Commerce Blvd. Suite 300 Boca Raton, FL 33487 (561) 443-5566	Multiply's DMCA take down procedures.

2. **Description of Document Categories**

Set forth below are categories of documents, data compilations, and other tangible things in the possession, control or custody of Defendants that Defendants may use

to support their defenses. It is believed that all categories of documents are located at or through the headquarters of Multiply in Florida.

- a. Documents related to relevant aspects of Multiply's website functionality.
- b. Documents related to the conception, development and implementation of Multiply's DMCA notice and take down policy and procedures.
- c. Documents related to the conception, development and implementation of Multiply's music functionality.
- d. Documents sufficient to quantify user activity as it relates to Multiply's music functionality.
- e. Documents related to communications between Multiply and Plaintiffs.
- f. Documents related to notices provided to Multiply pursuant to its DMCA notice and take down procedures.
- g. Documents sufficient to show revenues and/or profits attributable to user activity on Multiply's website relating to music functionality and/or the alleged infringing conduct of Multiply's users.

3. Computation of Damages

Defendants deny any and all liability to Plaintiffs. Defendants do not seek monetary damages from the Plaintiffs, but do reserve the right to seek an award of all available costs and attorneys' fees at the appropriate time once the claims against them have been denied or dismissed.

4. **Insurance**

Defendants are not currently aware of any insurance policy that would provide coverage for the claims asserted in this action, but will amend this response should the circumstances change.

Dated: New York, New York
April 25, 2008

/s/ Jeffrey A. Conciatori
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